At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 26th day of August 2025

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

RUDY RENONCE,

Plaintiff(s),

-against-

RUBEN MORDUHAYEV, RIBI SULEYMANOV, PRESIDENT AUTO CENTER INC., and THE EVERGREENS,

Defendant(s).

DECISION & ORDER
Index No.: 504199/2021

Calendar No.: 32 & 42

Motion Seq.: 006 & 007

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
Notice of Motion and Supporting Documents (NYSCEF 128-136)	1, 2
Affirmation in Opposition and Supporting Documents (NYSCEF 137-139)	3
Reply Affirmation and Exhibit (NYSCEF 148-149)	4
Notice of Cross-Motion and Supporting Documents (NYSCEF 140-147)	5, 6
Affirmation in Opposition (NYSCEF 150)	7
Reply Affirmation and Exhibit (NYSCEF 151-152)	8

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

Plaintiff commenced this action for personal injuries arising out of a slip and fall on the premises known as 1605 Bushwick Avenue, Brooklyn, New York, owned by defendant The Evergreens (Evergreens) and leased by defendant President Auto Center Inc. (President Auto).

It is alleged by plaintiff that on 2/9/2021, President Auto was open for business. Plaintiff arrived at the premises to pay for a vehicle he purchased from President Auto. When he was exiting defendants' office inside this commercial property, plaintiff fell on snow and ice because

defendants had not cleared a path. The snow and ice were the result of a snowstorm on 2/8/2021. Defendants dispute that plaintiff fell inside their property. It is defendants' position that plaintiff fell on the street.

Defendants have moved for summary judgment on the issue of liability dismissing the complaint (MS 006) and plaintiff has cross-moved only against the owner President Auto for partial summary judgment on liability (MS 007).

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a *prima facie* entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], *citing Alvarez v Prospect Hospital,* 68 NY2d 324). "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.,* 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.,* 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Shop & Stop, Inc*., 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in

dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (*see Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

Upon a motion for summary judgment in an action for damages arising out of a defective condition on a property, a plaintiff must establish a prima facie showing, that "the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries" (*Tsyganash v Auto Mall Fleet Mgt., Inc.,* 163 AD3d 1033, 1033-1034 [2d Dept 2018]). An out-of-possession landowner also has a non-delegable duty to maintain the public sidewalk in a reasonably safe condition notwithstanding a lease agreement with a non-owner/tenant (*Xiang Fu He v Troon Management, Inc.,* 34 NY3d 167, 170 [2019]; § 7-210 of the Administrative Code of the City of New York).

Even if a condition is open and obvious, defendants still have this obligation to maintain the property in a reasonably safe condition (*Carasco v Schlesinger*, 222 AD3d 476, 477 [2d Dept 2023]). Therefore, defendants can still be held liable for failing to maintain their property because "[t]he determination of whether an asserted hazard is open and obvious cannot be divorced from the surrounding circumstances, and whether a condition is not inherently dangerous, or constitutes a reasonably safe environment, depends on the totality of the specific facts of each case" (*Russo v Home Goods, Inc*., 119 AD3d 924, 925-926 [2d Dept. 2014]). The presence of such a condition only relieves the owner of its separate duty to warn others of its presence (*DiVietro v Gould Palisades Corp.,* 4 AD3d 324, 325 [2d Dept 2004]; *Westbrook v WR Activities-Cabrera Markets,* 5 AD3d 69, 70 [2d Dept 2004]).

Both motions are denied because notwithstanding the open and obvious nature of the snow and ice, it is plaintiff's argument that he essentially did not have an alternative means of

ingress and egress to this commercial property (*Russo v Home Goods, Inc*., 119 AD3d 925-926). Further, the lease agreement that obligated the tenant President Auto to perform snow removal, did not relieve Evergreens of its non-delegable duty to maintain the property in a reasonably safe condition (*Xiang Fu He v Troon Management, Inc.,* 34 NY3d 170). The open and obvious nature of a dangerous condition or hazard is a question of comparative fault for a jury (*Cupo v Karfunkel*, 1 AD3d 48, 51 [2d Dept) 2003]). A jury must also determine the questions of fact concerning the location of plaintiff's fall because the Court cannot resolve the issue of credibility considering the parties conflicting testimony (*Cameron v City of Long Beach*, 297 AD2d 774), and whether the alleged snow and ice condition was inherently dangerous (see *Cupo v Karfunkel*, 1 AD3d 51).

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment (MS 006) and plaintiff's cross-motion for summary judgment (MS 007) are DENIED.

This constitutes the decision and order of the Court.

E N T E R:

Hon. Anne J. Swern, J.S.C.
Dated: 8/26/2025

For Clerks use only:

MG _____

MD _____

Motion seq. # _____